

Fleming, et al. v. COP, et al.

No. CV04-2338 RSM

**DECLARATION OF MARCUS B. NASH
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Defendants.

EXHIBIT B

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1 THE WITNESS: Jack LaHolt was present.
 2 MR. FREY: Okay. Thank you.
 3 Q (By Mr. Kosnoff) And when you say they were playing in the
 4 field, would that have been a field on the Allenbach
 5 property?
 6 A On the Allenbach property.
 7 Q Was the Allenbach property ever referred to as "the
 8 Allenbach compound"?
 9 MR. FREY: Object to the form of the
 10 question. You can answer.
 11 Q (By Mr. Kosnoff) Have you ever heard that term used?
 12 A Yes, I have.
 13 Q Did you ever use that term in referring to the Allenbach
 14 property?
 15 A Yes, I did.
 16 Q Now, you said that the boys, the Allenbach boys and your
 17 sons, were playing in a field and Jack LaHolt was there?
 18 A Mm-hm. (Witness answers affirmatively.)
 19 Q Did you witness this or did you learn about it later?
 20 A I learned about it --
 21 Q Who did you learn --
 22 A -- right after it happened.
 23 Q Okay. How did you learn about it, and what did you learn
 24 occurred in that field?
 25 A Jimmy and Bob and Tom come running down to the house --

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1 MR. FREY: I'm going -- I'm going to
 2 object to the response -- but go ahead; you can answer -- on
 3 the basis it's all hearsay. Go ahead.
 4 A They were all excited, upset, and they proceeded to tell me
 5 what happened.
 6 Q (By Mr. Kosnoff) And what did they say?
 7 MR. FREY: I'm going to object. Go
 8 ahead. You can answer.
 9 A Well, they didn't use the word "masturbate." Do you want me
 10 to tell you the exact words they said?
 11 Q (By Mr. Kosnoff) To the best of your recollection, the
 12 words that were used, yes.
 13 A They said Jack was rubbing his dick up and down in front of
 14 them. He had them all in a circle. And some white stuff
 15 come out, and they asked me what the white stuff was.
 16 Q Now, were -- who was speaking? Was it Tommy or Bobby or
 17 which one of the boys?
 18 A All -- all three of them.
 19 MR. FREY: I'm going to object to the
 20 form of the question. You may go ahead and answer.
 21 A All three of them.
 22 Q (By Mr. Kosnoff) Okay. Was there any confusion in your
 23 mind as to what kind of activity they were describing to
 24 you?
 25 A None whatsoever.

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1 Q What was your reaction upon hearing this?
 2 A Well, first it was shock. And then I was very upset. I
 3 had -- I had to leave the room. And I come back, and then I
 4 was very angry.
 5 Q What was the first thing you did?
 6 A Well, I talked to the boys. I said, "I think I'll go over
 7 and talk to Jack."
 8 Q Meaning Jack LaHolt?
 9 A Jack LaHolt. And then I thought -- my husband was working
 10 at the time. And it was about two hours before he would
 11 arrive home from work. And then I thought it best to wait
 12 until he got home and we would decide what to do.
 13 Q And did you wait until he got home?
 14 A Yes, I did.
 15 Q What happened when he got home?
 16 A I gathered the boys around and told him exactly what had
 17 happened.
 18 Q And what is your husband's name?
 19 A Jerry.
 20 Q What was Jerry's reaction?
 21 A He was very upset. He had -- he'd spoke to Jack more than
 22 I, just, oh, casually.
 23 Q After you talked with your husband, what did you do next?
 24 A Well, it was right at dinner time, so we all decided what we
 25 would do. And we thought it better to go over and talk to

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1 Dr. Allenbach.
 2 Q Why did you think that was the best course of action, to go
 3 talk to Dr. Allenbach?
 4 A Well, I knew he was the -- he was the bishop in the church,
 5 Mormon Church. I thought he would have -- he was -- I
 6 thought he would have more authority to take care of the
 7 matter.
 8 Q And did you and your husband go and see Dr. Allenbach?
 9 A Yes, we did.
 10 Q Was it that same day?
 11 A Oh yes, that -- right after dinner.
 12 Q Tell us to the best of your recollection what occurred when
 13 you arrived at the front door of the Allenbach home.
 14 A Veloy Allenbach answered the door and --
 15 Q Veloy Allenbach is Mrs. Herman Allenbach?
 16 A Yes, mm-hm. And we told her we'd like to talk to her and
 17 Herman Allenbach. And he was in bed with a broken leg. She
 18 took us in the bedroom. And right out I said, "Jack has
 19 been sexually abusing our boys." At that time he asked
 20 Veloy Allenbach to go out and shut the door.
 21 Q Did she then leave the room?
 22 A Yes, she left the room.
 23 Q And shut the door behind her?
 24 A Mm-hm. (Witness answers affirmatively.)
 25 Q Who was then in the room with Dr. Allenbach?

4 (Pages 10 to 13)

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1 A My husband and myself.
2 Q And Dr. Allenbach was in bed?
3 A He was in bed.
4 Q Tell us what the conversation -- what conversation took
5 place then after Veloy left the room?
6 MR. FREY: I'm going to object to any
7 testimony concerning conversations she had.
8 Q (By Mr. Kosnoff) Go ahead.
9 A We told him what had happened, what Jack did. We told him
10 he masturbated in front of the boys, and the boys were
11 curious as to what the white stuff was. And we left it then
12 for him to reply.
13 Q What did he say?
14 MR. FREY: Same objection. I'll have
15 just a continuing objection if that's all right with you,
16 Counsel.
17 MR. KOSNOFF: That's fine.
18 MR. FREY: Go ahead.
19 A He didn't seem too concerned. He -- he wasn't like I was
20 when I first heard it or my husband. He says, "I'll take
21 care of it." And that was as far as it went.
22 And him -- I trusted Dr. Allenbach. I -- he was the
23 bishop in the Mormon Church, and I thought if I can't trust
24 him, who can I. And I believe he rose to high priest.
25 Q (By Mr. Kosnoff) Why -- why did you believe that he was a

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1 on outings there.
2 Q Boy Scout outings?
3 A Boy Scout outings frequently.
4 Q Did your sons ever go on those Mormon Church --
5 A No.
6 Q -- Boy Scout outings?
7 A Not on the Boy Scout outings.
8 Q Did they ever go to that -- that camp on Lake Kachess?
9 A When they were building it, they went once or twice helping
10 as they could pick up wood, pick up nails, just the general
11 building of the -- I'd never been up there, so I can't say
12 what kind of a building it was. I believe it was a dorm, or
13 they had tents, or I'm really not -- can't say because I'd
14 never seen it.
15 Q With respect to your sons after this incident with Jack
16 LaHolt and speaking to Dr. Allenbach, did you speak to them
17 about whether they could ever return to the Allenbach
18 property?
19 A I forbade them to go on the property when Jack was present,
20 to have anything to do with him.
21 Q To your knowledge, did they have any contact after that with
22 Jack LaHolt?
23 A Not that I'm aware of. If they did, they kept it from me.
24 MR. KOSNOFF: Those are all the
25 questions I have. Thank you, Mrs. Kelly.

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1 bishop in the Mormon Church when you spoke to him?
2 A Oh, it was common knowledge.
3 Q Okay. Do you know how you acquired that common knowledge?
4 A From the children. They'd always be bragging about it, how
5 their dad -- my husband was a mechanic at Boeing, and you
6 know how kids are. They have to go you one better: My dad
7 is a bishop in the Mormon Church.
8 Q And what did you understand that to mean?
9 A Well, that he had control. He was -- I knew little of the
10 Mormon Church, but I knew a bishop was a very important part
11 of the church.
12 Q Were there Mormon Church functions that went on regularly at
13 the Allenbach compound?
14 A Truthfully, I cannot say. I -- we were not in the same
15 social circles with them. We were Catholic.
16 Q Was there a -- was there a baseball or softball diamond on
17 the property?
18 A He built -- he built -- Dr. Allenbach built a baseball
19 diamond with a backstop so the -- their Boy Scout troop
20 could come and practice their games there.
21 Q Boy Scout troop or baseball team?
22 A Well, I -- I assumed they were all from the Mormon Church.
23 Q To your knowledge, did Dr. Allenbach have any role in the
24 Mormon Church's Boy Scouting program?
25 A Yes. He had a cabin up at Lake Kachess, and they would go

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1 THE WITNESS: Mm-hm.
2
3 EXAMINATION
4 BY MR. FREY:
5 Q Mrs. Kelly, my name is Tom Frey.
6 A Yes.
7 Q And I'm here representing the defendants in this lawsuit,
8 which are, for the record, The Corporation of the President
9 of the Church of Jesus Christ of Latter-Day Saints, and LDS
10 Social Services, also known as the LDS Family Services.
11 A Mm-hm.
12 Q I'd like to do a little background if I could for just a
13 minute. A couple of weeks ago, do you remember when I
14 phoned you at home?
15 A Yes, I do.
16 Q Okay. And I asked if you would talk with me about what
17 information you might have concerning Jack LaHolt?
18 A Yes.
19 Q Okay. And did you tell me to call you back the following
20 day after you spoke with your son?
21 A Yes.
22 Q And when I called you back the following day, did you talk
23 with me?
24 A Yes.
25 Q And did you agree to discuss with me what information you

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1 been from the time that you first noticed Jack LaHolt
2 helping Dr. Allenbach until this incident which you've
3 described in your testimony involving the four boys? Had he
4 been there weeks, months --
5 A Oh.
6 Q -- a year and a half, five years, what?
7 A No. It was probably two -- two to three months. I don't --
8 I -- I'm really not sure. But it was shortly afterwards.
9 Q Shortly after he began doing work for Dr. Allenbach?
10 A Yes.
11 Q Okay. And I'm not trying to pin you down to an exact date.
12 I'm trying to get a sense whether he was there years before
13 it happened --
14 A Oh no.
15 Q -- or it was months before it happened?
16 A Months.
17 Q Months. Okay. Thank you.
18 Did you know Jimmy Allenbach pretty well?
19 A Oh yes. I knew him from the day he was adopted. He was
20 three.
21 Q All right. And he played with your children; is that
22 correct?
23 A Yes, all the time.
24 Q Okay. What kind of a boy was he?
25 A He was happy-go-lucky.

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1 Q Okay. And --
2 A Always smiling.
3 Q All right. Did that change at some point in time as you saw
4 him grow up?
5 A Yes. He became -- became not a troublemaker. Mischievous
6 is more the word, at school. Veloy removed him from the
7 school, put him in a private school when he was in sixth
8 grade.
9 Q Okay. Is that because of disciplinary problems they were
10 having?
11 A Yes.
12 Q Did you ever talk to Veloy or Dr. Allenbach about that?
13 A No.
14 Q How did you know they were having disciplinary problems with
15 him?
16 A From my sons.
17 Q Okay. What did your sons tell you?
18 A That Jimmy was going to another school because he's getting
19 in trouble.
20 Q Okay. Then did you continue to have contact with Jimmy
21 after he went to the private school; you'd see him from time
22 to time?
23 A Oh yes. I knew him when -- up to the time he was married.
24 He lived at Dr. Allenbach's. Then he moved out. He would
25 still drop by and see us occasionally.

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1 Q When is the last time you spoke with Jimmy Allenbach?
2 A Oh, the last time I saw him, it must have been maybe three
3 years ago.
4 Q And what was the occasion that you saw him about three years
5 ago?
6 A He stopped by to see us.
7 Q Okay. Did he talk about anything to do with abuse or
8 lawsuits or anything of that --
9 A No.
10 Q -- nature?
11 A No.
12 Q Okay. Have you ever talked to Jimmy about being abused?
13 A No.
14 Q Okay. Do you know whether or not he was ever abused by Jack
15 LaHolt?
16 A Yes, I do from the time in the field when he was abused
17 along with my boys.
18 Q Okay.
19 A He and Ricky both.
20 Q Okay.
21 A He was the one that come down with my boys and told me.
22 Q All right. But beyond that incident, do you know whether or
23 not he was ever physically abused after that by Jack LaHolt?
24 A There were rumors, but I won't repeat the rumors because
25 they were just rumors.

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1 Q Okay. Did you ever speak to Jack LaHolt about this
2 incident?
3 A No.
4 Q Okay. Did Jack LaHolt continue to work at Dr. Allenbach's
5 after you went over and spoke with Dr. Allenbach about this
6 incident?
7 A I saw him there occasionally.
8 Q Okay. Did you ever go back and talk to Dr. Allenbach about
9 it?
10 A No. I assumed that he had taken care of it.
11 Q Okay. When this inc- -- when you were told of this incident
12 by the children, you properly thought this was a pretty
13 outrageous and terrible thing that --
14 A Yes, I did.
15 Q -- had happened?
16 Okay. Did you ever talk to any of the authorities, go
17 to the police and report this or go to any other social
18 agency and said, "Hey, this guy is down here masturbating --
19 A No.
20 Q -- in front of kids"?
21 A Back in those days we -- things like that were different.
22 Q Okay.
23 A You went to the head of the source. I knew Dr. Allenbach
24 was very high in the church. Jack was his employee. And I
25 figured Dr. Allenbach, being a bishop or a high priest,

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1 A All right.
 2 Q Did Mr. Kosnoff ever tell you that Dr. Allenbach was a high
 3 priest?
 4 A Oh no. I didn't have any conversation with him.
 5 Q Okay. Did Linda Walker ever tell you he was a high priest,
 6 this woman I have asked you about?
 7 A I told you before I don't recall this Linda.
 8 Q Okay. Did Kenny Fleming or anyone else? Who told you that
 9 he was a high priest?
 10 A Well, it must have come from the children.
 11 Q Which children?
 12 A The Allenbach children.
 13 Q Why do you say it must have come from them?
 14 A Well, because I wasn't involved in their church. There's
 15 they told me that their father -- he was a bishop. They
 16 told me he was being elevated to the next highest position.
 17 I don't know what they call them; that he's going to be a
 18 high priest.
 19 Q Okay. And this would have been the Allenbach children would
 20 have told you this?
 21 A Yes, mm-hm.
 22 Q Okay. You didn't learn it from any other source?
 23 A No.
 24 MR. FREY: Okay. I don't have any other
 25 questions. Thank you very much --

1 STATE OF WASHINGTON) I, BARBARA E. HAYDEN,
) ss CCR #2220, a duly authorized
 2 County of Snohomish) Notary Public in and for the
 State of Washington residing at
 3 Mountlake Terrace, do hereby
 certify:
 4
 5
 6

That the foregoing deposition of DOROTHY L. KELLY
 was taken before me and completed on March 2, 2005, and
 thereafter was transcribed under my direction; that the
 deposition is a full, true and complete transcript of the
 testimony of said witness, including all questions, answers,
 objections, motions and exceptions;

That the witness, before examination, was by me
 duly sworn to testify the truth, the whole truth, and
 nothing but the truth, and that the witness reserved the
 right of signature;

That I am not a relative, employee, attorney or
 counsel of any party to this action or relative or employee
 of any such attorney or counsel and that I am not
 financially interested in the said action or the outcome
 thereof;

That I am herewith securely sealing the said
 deposition and promptly delivering the same to Attorney Tim
 Kosnoff.

IN WITNESS WHEREOF, I have hereunto set my hand
 and affixed my official seal this 7th day of March 2005.

Barbara E. Hayden, CCR, RPR
 Notary Public in and for the State
 of Washington, residing at Mountlake
 Terrace.

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1 THE WITNESS: You're welcome.
 2 MR. FREY: -- Mrs. Kelly.
 3 THE VIDEOGRAPHER: Do you have any?
 4 MR. KOSNOFF: No, nothing further.
 5 THE VIDEOGRAPHER: It's 11:27. We are
 6 off the record, and that concludes this deposition.
 7 (Signature reserved.)
 8 (Deposition concluded
 9 at 11:27 a.m.)
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